

Federal Communications Commission

DA 02-3254

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Before the
Federal Communications Commission
Washington, DC 20554

DEC 5 2002

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In the Matter of)	
)	
Requests for Review and Waiver of the)	
Decisions of the)	
Universal Service Administrator by)	
)	
St. Mary High School)	File No. SLD-3 13807
Jersey City, New Jersey)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER**Adopted: November 26, 2002****Released: November 27, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by St. Mary High School, Jersey City, New Jersey.¹ St. Mary High School seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting St. Mary High School's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we affirm SLD's rejection and deny St. Mary High School's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on May 7, 2002, denying St. Mary High School's request for discounted services under the schools and libraries universal service support mechanism.³ Specifically, SLD denied St. Mary High School's request for discounts for internal connections, Funding Request Number (FRN) 821626.⁴ On August 26, 2002, St. Mary High School filed an appeal of SLD's decision.⁵ On August 27, 2002, SLD

¹ Letter from Scott DeCarolis, St. Mary High School, to Federal Communications Commission, filed September 16, 2002 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sr. Jackie, St. Mary High School, dated May 7, 2002 (Funding Commitment Decision Letter).

⁴ *Id.*

⁵ Letter from Howard Gerber, St. Mary High School, to Schools and Libraries Division, Universal Service Administrative Company, filed August 26, 2002 (Request for Administrator Review).

issued an Administrator's Decision on Appeal indicating that it would not consider St. Mary High School's appeal because it was received more than 60 days after the May 7, 2002 Funding Commitment Decision Letter was issued.⁶ St. Mary High School subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued on or after August 13, 2001 under section 54.720(b) of the Commission's rules, any such appeal must be filed with the Commission or SLD within 60 days of the issuance of the decision that the party seeks to have reviewed.⁷ Documents are considered to be filed with the Commission or SLD only upon receipt.⁸ Because the St. Mary High School's Request for Administrator Review was not filed within the requisite 60-day period, we affirm the Administrator's Decision on Appeal and deny the instant Request for Review.

4. To the extent that St. Mary High School is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules for its underlying appeal of SLD's denial of its funding request, we deny that request as well.⁹ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹⁰ St. Mary High School has not shown good cause for the untimely filing of its appeal with SLD. St. Mary High School states that the technology coordinator at St. Mary High School was forced to take an emergency medical leave of absence and as a result, St. Mary High School was prevented from filing the appeal in a timely fashion.¹¹

5. We conclude that St. Mary High School has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹² In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits.

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Howard Gerber, St. Mary High School, dated August 27, 2002 (Administrator's Decision on Appeal).

⁷ 47 C.F.R. § 54.720(b). See *Implementation of Interim Filing Procedures for Filings & Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 339 (Com. Car. Bur. rel. December 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings & Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, **Errata** (Com. Car. Bur. rel. December 28, 2001 and January 4, 2002).

⁸ 47 C.F.R. § 1.7

⁹ See 47 C.F.R. § 54.720(b)

¹⁰ See 47 C.F.R. § 1.3

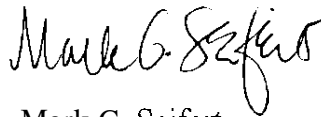
¹¹ Request for Waiver at 1

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

burden of adhering strictly to its filing deadlines. In order for the program to **work** efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal to be considered on the merits. An applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf, even when such persons are away from the office on medical leave or otherwise incapacitated.¹³ Here, St. Mary High School fails to present good cause as to why it could not timely file its appeal to SLD. We therefore find no basis for waiving the appeal filing deadline.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Requests for Review filed on September 16, 2002, by St. Mary High School, Jersey City, New Jersey, as well as the request to waive the deadline for filing its appeal with SLD ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert

Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹³ See, e.g., *Request for Review by New Orleans Public Schools, New Orleans, Louisiana, Federal-State Joint Board on Universal Service, Changes in the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-201456, 201463, 201409, 201449, and 201493, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 16653 (Com. Car. Bur. rel. September 18, 2001), para. 17 (unavailability of responsible staffperson due to sick leave is **not** a basis for granting an appeal).

